

Bryan L. Bleichner (SBN 220340)
CHESTNUT CAMBRONNE PA
100 Washington Avenue South, Suite 1700
Minneapolis, MN 55401
Phone: (612) 339-7300
bbleichner@chesnutcambronne.com

Gary M. Klinger (*pro hac vice* forthcoming)
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC
227 W. Monroe Street, Suite 2100
Chicago, IL 60606
Telephone: (866) 252-0878
gklinger@milberg.com

Terence R. Coates (*pro hac vice* forthcoming)
MARKOVITS STOCK & DEMARCO, LLC
119 E. Court St., Ste. 530
Cincinnati, Ohio 45202
Telephone: (855) 843-5442
tcoates@msdlegal.com

Attorneys for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Juliana Scales, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

THORLEY INDUSTRIES, LLC (D/B/A
4MOMS),

Defendant.

Case No.:

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

- 1) Violation of Cal. Bus. & Prof. Code § 17200 et seq.
- 2) Violation of Cal. Bus. & Prof. Code § 17500
- 3) Violation of Cal. Civ. Code § 1750 et seq.
- 4) Unjust Enrichment
- 5) Breach of Express Warranty
- 6) Breach of Implied Warranty

CLASS ACTION COMPLAINT

Plaintiff, Juliana Scales (“Plaintiff”), on behalf of herself and all others similarly situated, brings this class action against Defendant Thorley Industries, LLC (d/b/a 4moms) (“4moms” or “Defendant”) and alleges on personal knowledge, investigation of her counsel, and on information and belief as follows:

INTRODUCTION

1. Plaintiff files this Complaint on behalf of herself and other similarly situated consumers who purchased MamaRoo Baby Swings, versions 1.0 through 4.0 (“MamaRoo”) and/or RockaRoo Baby Rockers (“RockaRoo”) (collectively, the “Recalled Products”) for personal or household use and not for resale (“Class” or “Class Members”).

2. Plaintiff brings claims under Rule 23 on behalf of a nationwide class and a California subclass.

3. Defendant manufactures, distributes, markets, and sells a variety of children’s products. Its mission is to “develop dramatically better juvenile products and build a great company.”¹

4. Defendant sells its products online at its website, 4moms.com, on Amazon.com, and at brick-and-mortar stores nationwide, including Target and BuyBuy Baby.

5. On August 15, 2022, the U.S. Consumer Product Safety Commission (“CPSC”) and 4moms announced the recall of approximately two million MamaRoo swings and 220,000 RockaRoo rockers sold in the United States because when the Recalled Products are not in use, the restraint straps can dangle below the seat and crawling infants can become entangled in the

¹ <https://www.4moms.com/pages/about-us> (Last accessed: Sept. 6, 2022).

dangling straps, posing a strangulation hazard ² (the “Recall Notice”).

6. Prior to issuing the Recall Notice, Defendant had received two reports of entanglement incidents involving infants who became caught in the strap under the unoccupied MamaRoo infant swing after they crawled under the seat, including a 10-month-old infant who died from asphyxiation, and a 10-month-old infant who suffered bruising to his neck before being rescued by a caregiver.³

7. In its Recall Notice, Defendant recommends consumers with infants who can crawl to “immediately stop using the recalled swings and rockers and place them in an area where crawling infants cannot access. Consumers should contact 4moms immediately to register for a free strap fastener that will prevent the straps from extending under the swing when not in use.”⁴

8. Through its Recall Notice, Defendant provides a free strap fastener that Defendant claims “will prevent the straps from extending under the swing when not in use” (the “Recall”).

9. The Recalled Products were sold from January 2010 through August 2022 for between \$160 and \$250.

10. Plaintiff purchased a MamaRoo manufactured by Defendant from a Best Buy in San Rafael, California on or about one year ago in 2021.

11. Plaintiff regularly used the MamaRoo from the date of purchase until she learned the MamaRoo was recalled.

12. Plaintiff learned there was a recall of her MamaRoo due to the presence of

² <https://www.4moms.com/pages/safety-and-recall> (Last accessed: Sept. 6, 2022).

³ <https://www.cpsc.gov/Recalls/2022/4moms-Recalls-More-than-2-Million-MamaRoo-andRockaRoo-Infant-Swings-and-Rockers-Due-to-Entanglement-and-Strangulation-Hazards-OneDeath-Reported> (Last accessed: Sept. 6, 2022).

⁴ *Id.*

1 dangerous straps that could cause her infant to become entangled and/or strangled resulting in
2 injury or death.

3 13. Plaintiff seeks to recover damages based on (1) Defendant's violations of Cal.
4 Bus. & Prof. Code § 17200 *et seq.*; Violation of Cal. Bus. & Prof. Code § 17500, *et seq.*; Cal. Civ.
5 Code § 1750, *et seq.*; breach of express and implied warranties; and (2) under the theory of unjust
6 enrichment.

7
8 14. Given the massive quantities of the Recalled Products sold all over the country,
9 this class action is the proper vehicle for addressing Defendant's misconduct and for attaining
10 needed relief for those affected.

11 **PARTIES**

12 15. Plaintiff Juliana Scales is and was at all times relevant to this matter a resident of
13 the State of California residing in San Rafael, California, which is in San Mateo County.

14 16. Defendant is a limited liability corporation organized under the laws of the
15 Commonwealth of Pennsylvania, having a principal place of business at 40 24th Street, Pittsburgh,
16 Pennsylvania 15222. At all relevant times hereto, Defendant has designed, built, manufactured,
17 marketed, distributed, promoted and/or marketed, and sold the Recalled Products nationwide,
18 including in California.

19
20 **JURISDICTION AND VENUE**

21 17. This Court has personal jurisdiction over Defendant in this matter. The acts and/or
22 omissions giving rise to this action occurred in the state of California. Defendant has been afforded
23 due process because it has, at all times relevant to this matter, individually or through its agents,
24 subsidiaries, officers and/or representatives, operated, conducted, engaged in and carried on a
25 business venture in this state and/or maintained an office or agency in this state, and/or marketed,
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1 advertised, distributed and/or sold products, committed a statutory violation within this state
2 related to the allegations made herein, and caused injuries to Plaintiff and putative Class Members,
3 which arose out of the acts and/or omissions that occurred in the state of California, during the
4 relevant time period, at which time Defendant was engaged in business activities in the State of
5 California.

6
7 18. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §
8 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or more putative Class
9 Members, (ii) the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and
10 costs, and (iii) there is minimal diversity because at least one Plaintiff and Defendant are citizens
11 of different states. This Court has supplemental jurisdiction over Plaintiff's state law claims
12 pursuant to 28 U.S.C. § 1367.

13
14 19. Pursuant to 28 U.S.C. § 1391(a), venue is proper because a substantial part of the
15 events giving rise to the claims asserted occurred in this District. Venue is also proper pursuant to
16 28 U.S.C. § 1391(c) because Defendant conducts substantial business in this District, has sufficient
17 minimum contacts with this District, and otherwise purposely avails itself of the markets in this
18 District, through the promotion, sale, and marketing of the Products in this District. Venue is also
19 proper because Plaintiff resides in this District.

20 **INTRADISTRICT ASSIGNMENT**

21
22 20. Pursuant to Civil Local Rule 3-2(c-d), a substantial part of the events giving rise
23 to the claims herein arose in Marin County, California and this action should be assigned to the
24 San Francisco Division.

25 **COMMON FACTUAL ALLEGATIONS**

26 21. Defendant is a design and technology company whose mission "is to develop
27
28

1 dramatically better juvenile products and build a great company. Dramatically better products
2 redefine the most important attribute in their category. Great companies care more than financial
3 success.”⁵

4 22. Defendant’s website also states that Defendant is “dedicated to making the best
5 products for babies and their parents.”⁶

6 23. Defendant produces baby swings, rockers, bassinets, and play yards.⁷

7 24. As part of its mission, Defendant developed, marketed, and sold a variety of baby
8 rocking devices, such as MamaRoo and Rockaroo devices:
9

10 **Picture of MamaRoo**



20
21 **Picture of RockaRoo**

22
23
24
25 ⁵ <https://www.4moms.com/pages/about-us> (last visited: September 29, 2022).

26 ⁶ <https://www.gbbn.com/work/4momsheadquarters/#:~:text=Pittsburgh%2C%20Pa%20%7C%2065%2C000%20SF> (Last accessed: Aug. 17, 2022).

27 ⁷ *Id.*



25. Defendant's MamaRoo and RockaRoo devices cost hundreds of dollars, and Defendant has sold millions of Recalled Products in the United States and Canada.

Defendant's MamaRoo and RockaRoo Devices are a Clear and Present Danger to Children

26. On August 15, 2022, the United States Consumer Product Safety Commission and Defendant announced the recall of two million MamaRoo swings and 220,000 RockaRoo rockers.⁸

27. The basis, in part, for this recall is that "[w]hen the swing or rocker is not in use, their restraint straps can hang below the seat and the non-occupant crawling infants can become entangled in the straps, posing entanglement and strangulation hazards."⁹

28. "[Defendant] has received two reports of entanglement incidents involving infants who became caught in the strap under the unoccupied MamaRoo infant swing after they crawled under the set, including a 10-month-old infant who died from asphyxiation, and a 10-month-old

⁸ <https://www.cpsc.gov/Recalls/2022/4moms-Recalls-More-than-2-Million-MamaRoo-and-RockaRoo-Infant-Swings-and-Rockers-Due-to-Entanglement-and-Strangulation-Hazards-One-Death-Reported> (last accessed: September 29, 2022).

⁹ *Id.*

1 infant who suffered bruising to his neck before being rescued by a caregiver.”¹⁰

2 29. Defendant admitted that “when the swing or rocker is not in use, their restraining
3 snaps can hang below the seat and non-occupant crawling infants can become entangled in the
4 straps, posing entanglement and strangulation hazards.”¹¹



13
14 30. Defendant announced the recall would affect “about two million MamaRoo
15 swings and 220,000 RockaRoo rocker.”¹²

16 31. Defendant’s list of recalled items contains the following:

17 **4moms MamaRoo (model number 4M – 0005)**
18
19
20
21
22
23
24
25

26 ¹⁰ *Id.*

27 ¹¹ *Id.*

¹² *Id.*



4moms MamaRoo (Model 1026)



4moms MamaRoss (model 1037)



4moms RockaRoo (Model 4M-012)



32. The model number for the Recalled Products can be located on the bottom of the unit.¹³



33. Defendant first learned of the danger that the MamaRoo and RockaRoo pose to children in 2018.

34. In August 2018, a 10-month-old child was substantially harmed due to the MamaRoo and RockaRoo's product defect.¹⁴

¹³ *Id.*

¹⁴ <https://saferproducts.gov/PublicSearch/Detail?ReportId=1782312> (last accessed: September 29, 2022).

35. Specifically, on May 18, 2016, a woman in New York (“Mrs. Doe”) purchased a 2016 MamaRoo from Defendant at a Baby’s R Us store.

36. Two months later, Mrs. Doe’s 10-month-old child was harmed due to product defect in the MamaRoo. Mrs. Doe wrote:

There is a space on this product between the base and the seat itself. The straps to hold the baby in the seat connect from the base and go up into the seat. My son crawled through this space and got strangled and the strap got so tightly twisted around his neck I had to cut the strap to loosen him. He suffered marks and popped blood vessels all the way around his neck (as anyone would get if they hung themselves). He also had popped blood vessels around his eyes, also a cause from being strangled. I have pictures. Very scary and is dangerous if anyone has this product and doesn't realize the straps underneath can do this.¹⁵

37. Mrs. Doe’s child was injured as a result of Defendant’s Mamaroo device.

38. In another incident, the same defect—*i.e.*, when the swing or rocker is not in use, their restraint straps can hang below the seat and the non-occupant crawling infants can become entangled in the straps, posing entanglement and strangulation hazards—led to the asphyxiation death of a ten-month-old infant.¹⁶

39. The Recalled Products are a clear and present to danger that can result in death by strangulation.

Defendant’s Recall is Insufficient and has Rendered the MamaRoo and RockaRoo Devices Worthless

40. Despite becoming aware of the hazard posed by the Recalled Products as early as 2018, Defendant did not issue any recall or disclose the known hazards of any device until August 15, 2022.

41. On August 15, 2022, Defendant issued a recall of the MamaRoo and RockaRoo

¹⁵ *Id.*

¹⁶ <https://www.buzzfeednews.com/article/paigeskinner/mamaroo-rockaroo-recalled> (last visited: September 29, 2022).

1 devices.¹⁷

2 42. Under the recall, “[c]onsumers with infants who can crawl should immediately
3 stop using the recalled swings and rockers, place them in an area where crawling infants cannot
4 access and contact 4moms immediately to register for a free strap fastener that will prevent the
5 straps from extending under the swing when not in use.”¹⁸

6 43. In other words, Defendant’s recall does not replace the MamaRoo or RockaRoo—
7 it just adds a strap fastener that allegedly prevents infant strangulation.

8 44. Other than blanket statements, Defendant’s recall does not provide any evidence
9 that the strap fastener actually prevents infant strangulation.

10 45. Defendant’s recall does not provide any instruction on how to install the strap
11 fastener. As such, it is possible that a reasonable consumer could improperly install the strap
12 fastener and thus render it unworkable.

13 46. Defendant’s recall does not offer any monetary compensation for Recalled
14 Products.

15 47. Defendant’s recall and its remedy therein is wholly insufficient.

16 48. As a result of the health and safety risks to infants associated with the use and
17 nonuse of the Recalled Products, together with Defendant’s concealment of these risks from the
18 date they were first to Defendant or discovery by Defendant through August 15, 2022, the Recalled
19 Products have been rendered completely worthless or, at the very least, have been substantially
20 diminished in value.

21 49. The information described above, including the now-known health and safety
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23 ¹⁷ See *supra* Fn 3.

24 ¹⁸ *Id.*

1 risks to infants of the Recalled Products, the recall, and medical warnings and advice issued by
2 Defendant, have rendered the Recalled Products worthless to consumers. If parents of infants
3 choose to discontinue use of the Recalled Products, they must pay for another expensive device
4 for their infants.

5 50. Defendant's recall is insufficient because the MamaRoo and RockaRoo have been
6 rendered worthless as a result of the product defect.

7 51. Defendant's recall is insufficient because the MamaRoo and Rockaroo have, at
8 least, been substantially diminished in value.

9 52. As a result of the above, Plaintiff and Class Members will have to undertake
10 considerable expense replacing the Recalled Products and can no longer resell the MamaRoo or
11 RockaRoo for any value.

12 53. As a result of the above, Plaintiffs and Class Members have suffered significant
13 financial harm.

14
15 **Defendant's False and Deceptive Advertising and Labeling of the Products.**

16 54. Despite learning the Recalled Products may harm or even kill infant children as
17 early as 2018, Defendant did not disclose the hazards of Recalled Products—including risk of
18 strangulation—to purchasers or users until August 15, 2022.

19 55. Defendant concealed the hazards of the Recalled Products for 4 years.

20 56. Despite knowing the hazards of the Recalled Products, Defendant continue to
21 market the Recalled Products as "safe" for at least 4 years.

22 57. During this time, Defendant unreasonably and unjustly profited from the
23 manufacture and sale of the Recalled Products and unreasonably put infants at risk of development
24 and strangulation.

1 58. In violation of 21 U.S.C. § 362(a) and 21 C.F.R. § 701.1(b), Defendant has
2 consistently, falsely and deceptively advertised and labeled the Recalled Products were safe for
3 use.

4 59. Since launching the Recalled Products, Defendant has consistently conveyed its
5 uniform, deceptive message to consumers throughout the United States, including the state of
6 California, that the Recalled Products are safe for use.

7 60. These uniform deceptive claims have been made and repeated across a variety of
8 media including Defendant's Products' labels, websites and online promotional materials, and at
9 the point-of-purchase, where they cannot be missed by consumers. In truth, Defendant's claims
10 that the Recalled Products were safe was false, misleading, and deceptive because the Recalled
11 Products lead to the risk of infant strangulation.
12

13 61. Upon information and belief, Defendant knowingly permitted the manufacture
14 and sale of the Recalled Products that were dangerous and unfit for sale.
15

16 62. Prior to placing the Products into the stream of commerce for sale to Plaintiff and
17 Class Members, Defendant was aware or should have been aware that the Recalled Products were
18 unsafe and could lead to infant strangulation or, at least a substantial risk thereof.

19 63. Defendant knew, or but for its reckless indifference would have known, prior to
20 Plaintiff's and Class Members' Class's purchases of the Recalled Products that it would continue
21 to receive complaints of infant choking and/or strangulation.
22

23 64. Defendant knew, or but for its reckless indifference would have known, that: (a)
24 the risk of infant strangulation was substantial; (b) Defendant's customers were unaware of that
25 substantial risk, and (c) those customers had a reasonable expectation that Defendant would not
26 sell the Recalled Products under those conditions.
27
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1 65. Despite such knowledge, Defendant did not disclose to prospective purchasers,
2 that there was a substantial risk of infant strangulation. Defendant instead continued to claim that
3 the Recalled Products were safe.

4 66. However, despite the representation that the Recalled Products were safe, there
5 was a substantial risk of infant strangulation.

6 67. Upon information and belief, Defendant reinforced the false and deceptive claims
7 that the Recalled Products were safe through the websites of various authorized retailers and on
8 its own product websites.
9

10 **PLAINTIFF'S FACTUAL ALLEGATIONS**

11 68. Plaintiff purchased the MamaRoo at Best Buy in San Rafael, California. Before
12 purchasing the Recalled Products, Plaintiff reviewed information about the Recalled Products on
13 the Recalled Products' labels and the fact that the Recalled Products were being sold for personal
14 use, and not resale.
15

16 69. At the time of purchasing her Recalled Products, Plaintiff also reviewed the
17 accompanying disclosures and marketing materials, and understood them as representations made
18 by Defendant that the Recalled Products were safe for their children to use.

19 70. Plaintiff relied on these representations and in deciding to purchase Defendant's
20 Recalled Products.

21 71. Accordingly, these representations were part of the basis of the bargain, in that she
22 would not have purchased the Recalled Products had she known these representations were not
23 true.
24

25 72. Here, Plaintiff did not receive the benefit of her bargain because Defendant's
26 Recalled Products are not safe to use by children. Instead, the restraint straps can dangle below the
27

1 seat and crawling infants can become entangled in the dangling straps, posing a strangulation
2 hazard.

3 73. As a result of Defendant's concealment, misrepresentations and omissions, Plaintiff
4 purchased the Recalled Products. Had Plaintiff known the true nature of the Recalled Products,
5 she would not have purchased the Recalled Products.

6 74. As a result of Defendant's conduct, Plaintiff has suffered financial because the
7 Recalled Product that she purchased is now worthless or, at least, substantially diminished in value.
8

9 **ESTOPPEL FROM PLEADING AND**
10 **TOLLING OF APPLICABLE STATUTES OF LIMITATIONS**

11 75. Plaintiff and the members of the Class had no way of knowing about Defendant's
12 conduct with respect to the strangulation risks associated with the use and non-use of the Recalled
13 Products.

14 76. Neither Plaintiff nor any other members of the Class, through the exercise of
15 reasonable care, could have discovered the conduct by Defendant alleged herein. Further, Plaintiff
16 and Class Members did not discover and did not know facts that would have caused a reasonable
17 person to suspect that Defendant was engaged in the conduct alleged herein.

18 77. For these reasons, all applicable statutes of limitation have been tolled by the
19 discovery rule with respect to claims asserted by Plaintiff and the Class.
20

21 78. Further, by failing to provide immediate notice of the risks of strangulation
22 associated with continued use and non-use of the Recalled Products, 4moms concealed its conduct
23 and the existence of the claims asserted herein from Plaintiff and the members of the Class.

24 79. Upon information and belief, Defendant intended its acts to conceal the facts and
25 claims from Plaintiff and members of the Class. Plaintiff and members of the Class were unaware
26 of the facts alleged herein without any fault or lack of diligence on their part and could not have
27

1 reasonably discovered 4moms conduct. For this reason, any statute of limitations that otherwise
 2 may apply to claims of Plaintiff or members of the Class should be tolled.

3 80. Once Plaintiff learned about the recall, she promptly acted to preserve her rights,
 4 filing this action. Defendant is estopped from asserting any statute of limitation defense that might
 5 otherwise be applicable to the claims asserted herein.

6 **CLASS ACTION ALLEGATIONS**

7
 8 81. Plaintiff brings this action on behalf of herself and the following Classes pursuant
 9 to Federal Rule of Civil Procedure 23(a), (b)(2) and/or (b)(3). Specifically, the Classes are defined
 10 as:

11 **National Class:** All persons in the United States who purchased the Recalled
 12 Products for personal use and not for resale from January 2010 through August
 13 2022.

14 82. In the alternative, Plaintiff brings this action on behalf of the following State Sub-
 15 Class:

16 **California Sub-Class:** All persons in the State of California who purchased the
 17 Recalled Products for personal use and not for resale from January 2010 through
 18 August 2022.

19 83. Excluded from the Classes are (a) any officers, directors or employees, or
 20 immediate family members of the officers, directors or employees, of any Defendant or any entity
 21 in which a Defendant has a controlling interest, (b) any legal counsel or employee of legal counsel
 22 for any Defendant, and (c) the presiding Judge in this lawsuit, as well as the Judge's staff and their
 23 immediate family members.

24 84. Plaintiff reserves the right to amend the definition of the Classes if discovery or
 25 further investigation reveals that the Classes should be expanded or otherwise modified.

26 85. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** Class Members are so
 27
 28

1 numerous and geographically dispersed that joinder of all Class Members is impracticable. While
 2 the exact number of Class Members remains unknown at this time, upon information and belief,
 3 there are thousands, if not hundreds of thousands, of putative Class Members. Moreover, the
 4 number of members of the Classes may be ascertained from Defendant's books and records. Class
 5 Members may be notified of the pendency of this action by mail and/or electronic mail, which can
 6 be supplemented if deemed necessary or appropriate by the Court with published notice.

7
 8 **86. Predominance of Common Questions of Law and Fact – Federal Rule of Civil**
 9 **Procedure 23(a)(2) and 23(b)(3).** Common questions of law and fact exist as to all Class Members
 10 and predominate over any questions affecting only individual Class Members. These common
 11 legal and factual questions include, but are not limited to, the following:

- 12 a. Whether the Recalled Products contain the defect alleged herein;
- 13 b. Whether Defendant failed to appropriately warn Class Members of the
- 14 damage that could result from use of the Recalled Products;
- 15 c. Whether Defendant had actual or imputed knowledge of the defect but did
- 16 not disclose it to Plaintiff and the Classes;
- 17 d. Whether Defendant promoted the Recalled Products with false and
- 18 misleading statements of fact and material omissions;
- 19 e. Whether Defendant's marketing, advertising, packaging, labeling, and/or
- 20 other promotional materials for the Recalled Products are deceptive, unfair
- 21 or misleading;
- 22 f. Whether Defendant's actions and omissions violate California law;
- 23 g. Whether Defendant's conduct violates public policy;
- 24 h. Whether Plaintiff and putative members of the Classes have suffered an
- 25 ascertainable loss of monies or property or other value as a result of
- 26 Defendant's acts, omissions or misrepresentations of material facts;
- 27 i. Whether Defendant was unjustly enriched at the expense of Plaintiff and
- 28 members of the putative Classes in connection with selling the Recalled
- Products;

j. Whether Plaintiff and members of the putative Classes are entitled to monetary damages and, if so, the nature of such relief; and

k. Whether Plaintiff and members of the putative Classes are entitled to equitable, declaratory or injunctive relief and, if so, the nature of such relief.

87. Pursuant to Rule 23(b)(2), Defendant has acted or refused to act on grounds generally applicable to the putative Classes, thereby making final injunctive or corresponding declaratory relief appropriate with respect to the putative Classes as a whole. In particular, Defendant has manufactured, marketed, advertised, distributed and sold the Recalled Products that are deceptively misrepresented as being safe and appropriate for human and infant use when they are not.

88. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical of those of the absent Class Members in that Plaintiff and the Class Members each purchased and used the Recalled Products and each sustained damages arising from Defendant's wrongful conduct, as alleged more fully herein. Plaintiff shares the aforementioned facts and legal claims or questions with putative members of the Classes, and Plaintiff and all members of the putative Classes have been similarly affected by Defendant's common course of conduct alleged herein. Plaintiff and all members of the putative Classes sustained monetary and economic injuries including, but not limited to, ascertainable loss arising out of Defendant's deceptive misrepresentations regarding the Recalled Products being safe and appropriate for human and infant use.

89. **Adequacy – Federal Rule of Civil Procedure 23(a)(4).** Plaintiff will fairly and adequately represent and protect the interests of the members of the putative Classes. Plaintiff has retained counsel with substantial experience in handling complex class action litigation, including complex questions that arise in this type of consumer protection litigation. Further,

1 Plaintiff and her counsel are committed to the vigorous prosecution of this action. Plaintiff does
 2 not have any conflicts of interest or interests adverse to those of putative Classes.

3 **90. Insufficiency of Separate Actions – Federal Rule of Civil Procedure 23(b)(1).**

4 Absent a class action, Plaintiff and members of the Classes will continue to suffer the harm
 5 described herein, for which they would have no remedy. Even if separate actions could be brought
 6 by individual consumers, the resulting multiplicity of lawsuits would cause undue burden and
 7 expense for both the Court and the litigants, as well as create a risk of inconsistent rulings and
 8 adjudications that might be dispositive of the interests of similarly situated consumers,
 9 substantially impeding their ability to protect their interests, while establishing incompatible
 10 standards of conduct for Defendant. Accordingly, the proposed Classes satisfy the requirements of
 11 Fed. R. Civ. P. 23(b)(1).
 12

13 **91. Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).**

14 Defendant has acted or refused to act on grounds generally applicable to Plaintiff and all Members
 15 of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as
 16 described below, with respect to the members of the Classes as a whole.
 17

18 **92. Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is
 19 superior to any other available methods for the fair and efficient adjudication of the present
 20 controversy for at least the following reasons:

- 21 a. The damages suffered by each individual members of the putative Classes
 22 do not justify the burden and expense of individual prosecution of the
 23 complex and extensive litigation necessitated by Defendant's conduct;
- 24 b. Even if individual members of the Classes had the resources to pursue
 25 individual litigation, it would be unduly burdensome to the courts in which
 26 the individual litigation would proceed;
- 27 c. The claims presented in this case predominate over any questions of law or
 28 fact affecting individual members of the Classes;

- d. Individual joinder of all members of the Classes is impracticable;
- e. Absent a Class, Plaintiff and members of the putative Classes will continue to suffer harm as a result of Defendant's unlawful conduct; and
- f. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and members of the putative Classes can seek redress for the harm caused by Defendant.

93. In the alternative, the Classes may be certified for the following reasons:

- a. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudication with respect to individual members of the Classes, which would establish incompatible standards of conduct for Defendant;
- b. Adjudications of claims of the individual members of the Classes against Defendant would, as a practical matter, be dispositive of the interests of other members of the putative Classes who are not parties to the adjudication and may substantially impair or impede the ability of other putative Class Members to protect their interests; and
- c. Defendant has acted or refused to act on grounds generally applicable to the members of the putative Classes, thereby making appropriate final and injunctive relief with respect to the putative Classes as a whole.

CLAIMS FOR RELIEF

COUNT I

Violation of California's Unfair Competition Law Cal. Bus. & Prof. Code § 17200 et seq. ("UCL") (On Behalf of the California Sub-Class)

94. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth fully herein.

95. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200.

96. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendant as alleged herein constitute business acts and practices.

b. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq.;

99. Defendant's conduct with respect to the labeling, advertising, and sale of the Recalled Products was and is also unfair because it violates public policy as declared by specific constitutional, statutory or regulatory provisions, including but not limited to the applicable sections of: the Consumers Legal Remedies Act and the False Advertising Law.

101. Fraudulent: A statement or practice is “fraudulent” under the UCL if it is likely to mislead or deceive the public, applying an objective reasonable consumer test.

103. Defendant failed to disclose the material information that the straps used in the Recalled Products, and that the Recalled Products themselves, were unsafe and unfit for infant use.

104. Defendant profited from its sale of the falsely, deceptively, and unlawfully advertised Recalled Products to unwary consumers.

105. Plaintiff and Class Members are likely to continue to be damaged by Defendant's deceptive trade practices, because Defendant continues to disseminate misleading information on the Recalled Products' packaging. Thus, injunctive relief enjoining Defendant's deceptive practices is proper.

106. Defendant's conduct caused and continues to cause substantial injury to Plaintiff and the other Class Members. Plaintiff has suffered injury in fact as a result of Defendant's unlawful conduct.

107. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining Defendant from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices, and to commence a corrective advertising campaign.

108. Plaintiff and the Class also seek an order for and restitution of all monies from the sale of the Recalled Products, which were unjustly acquired through acts of unlawful competition.

COUNT II
Violation California's False Advertising Law
Cal. Bus. & Prof. Code § 17500 ("FAL")
(On Behalf of the California Sub-Class)

109. Plaintiff repeats and realleges the foregoing allegations in paragraphs as if fully set forth herein.

110. The FAL provides that "[i]t is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services" to disseminate any statement "which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading." Cal. Bus. & Prof. Code § 17500.

1 111. It is also unlawful under the FAL to disseminate statements concerning property
2 or services that are “untrue or misleading, and which is known, or which by the exercise of
3 reasonable care should be known, to be untrue or misleading.” *Id.*

4 112. As alleged herein, the advertisements, labeling, policies, acts, and practices of
5 Defendant relating to the Recalled Products misled consumers acting reasonably as to the safety
6 of the Recalled Products’ ability to be used safely by infants as intended.

7 113. Plaintiff suffered injury in fact as a result of Defendant’s actions as set forth
8 herein because she purchased the Products in reliance on Defendant’s false and misleading
9 claims that the Recalled Products, among other things, were safe and fit for infant use.

10 114. Defendant’s business practices as alleged herein constitute deceptive, untrue, and
11 misleading advertising pursuant to the FAL because Defendant has advertised the Recalled
12 Products in a manner that is untrue and misleading, which Defendant knew or reasonably should
13 have known, and omitted material information from its advertising.

14 115. Defendant’s representations and omissions were material because they were
15 likely to deceive reasonable consumers to induce them to purchase and use the Recalled Products
16 without being aware that the potential lethal impact of the straps used in the Recalled Products,
17 and therefore the Recalled Products themselves, were unsafe and unfit for infant use.

18 116. Defendant profited from its sale of the falsely and deceptively advertised
19 Recalled Products to unwary consumers.

20 117. As a result, Plaintiff, the California Sub-Class members, and the general public
21 are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of
22 the funds by which Defendant was unjustly enriched.

23 118. As a direct and proximate result of Defendant’s unfair and deceptive acts or
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practices, Plaintiff and the Class suffered damages by purchasing the Recalled Products because they would not have purchased or used the Recalled Products had they known the truth, and they received a product that was worthless because it contained unsafe straps which can cause a number of adverse health effects, including strangulation and asphyxiation.

119. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff, on behalf of herself and the California Sub-Class, seeks an order enjoining Defendant from continuing to engage in deceptive business practices, false advertising, and any other act prohibited by law, including those set forth in this Complaint.

COUNT III
Violation of California's Consumer Legal Remedies Act
Cal. Civ. Code § 1750 et seq. ("CLRA")
(On Behalf of the California Sub-Class)

120. Plaintiff repeats and realleges the foregoing allegations as if fully set forth herein.

121. The CLRA prohibits deceptive practices in connection with the conduct of a business that provides goods, property, or services primarily for personal, family, or household purposes.

122. Defendant's false and misleading labeling and other policies, acts, and practices were designed to, and did, induce the purchase and use of the Recalled Products for personal, family, or household purposes by Plaintiff and Class Members, and violated and continue to violate the following sections of the CLRA:

a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have;

b. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another;

c. § 1770(a)(9): advertising goods with intent not to sell them as

1 advertised; and

2 d. § 1770(a)(16): representing the subject of a transaction has been
3 supplied in accordance with a previous representation when it has not.

4 123. Defendant profited from the sale of the falsely, deceptively, and unlawfully
5 advertised Recalled Products to unwary consumers.

6 124. Defendant's wrongful business practices constituted, and constitute, a continuing
7 course of conduct in violation of the CLRA.

8 125. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff will provide a
9 letter to Defendant concurrently with the filing of this Class Action Complaint or shortly
10 thereafter with notice of its alleged violations of the CLRA, demanding that Defendant correct
11 such violations, and providing it with the opportunity to correct its business practices. If
12 Defendant does not thereafter correct its business practices, Plaintiff will amend (or seek leave
13 to amend) the complaint to add claims for monetary relief, including restitution and actual
14 damages under the Consumers Legal Remedies Act.
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16 126. Pursuant to California Civil Code § 1780, Plaintiff seeks injunctive relief, her
17 reasonable attorney fees and costs, and any other relief that the Court deems proper.
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19 **COUNT IV**
20 **Unjust Enrichment**
21 **(On Behalf of the Nationwide and/or**
22 **California Sub-Class)**

23 127. Plaintiff repeats and realleges the allegations in the foregoing paragraphs as if
24 fully set forth herein.

25 128. Plaintiff brings this cause of action on behalf of herself, and the putative Classes
26 against Defendant under California law.

27 129. Plaintiff and putative Class Members conferred a benefit on Defendant when
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1 they purchased the Recalled Products, of which Defendant had knowledge.

2 130. Defendant either knew or should have known that the payments rendered by
3 Plaintiff and the Class was given with the expectation that the Recalled Products would have
4 the qualities, characteristics and suitability for use represented and warranted by 4moms. As
5 such, it would be inequitable for Defendant to retain the benefit of the payments under these
6 circumstances.

7 131. By its wrongful acts and omissions described herein, including selling the
8 Recalled Products, which contain a defect described in detail above and did not otherwise
9 perform as represented and for the particular purpose for which they were intended, Defendant
10 was unjustly enriched at the expense of Plaintiff and putative Class Members.

11 132. Plaintiff's detriment and Defendant's enrichment were related to and flowed
12 from the wrongful conduct challenged in this Complaint.

13 133. Defendant has profited from its unlawful, unfair, misleading, and deceptive
14 practices at the expense of Plaintiff and putative Class Members under circumstances in which
15 it would be unjust for Defendant to be permitted to retain the benefit. It would be inequitable for
16 Defendant to retain the profits, benefits, and other compensation obtained from its wrongful
17 conduct as described herein in connection with selling the Recalled Products.

18 134. Defendant has been unjustly enriched in retaining the revenues derived from
19 Class Members' purchases of the Recalled Products, which retention of such revenues under
20 these circumstances is unjust and inequitable because Defendant manufactured the defective
21 Recalled Products, and Defendant misrepresented the nature of the Recalled Products,
22 misrepresented their characteristics, and knowingly marketed and promoted dangerous and
23 defective Recalled Products, which caused injuries to Plaintiff and the Class because they would
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1 not have purchased the Recalled Products based on the same representations if the true facts
2 concerning the Recalled Products had been known.

3 135. Plaintiff and Class Members have been damaged as a direct and proximate result
4 of Defendant's unjust enrichment because they would not have purchased the Recalled Products
5 on the same terms or for the same price had they known the true nature of the Recalled Products
6 and the misstatements regarding what the Recalled Products were and their characteristics.

7 136. Defendant either knew or should have known that payments rendered by Plaintiff
8 and putative Class Members were given and received with the expectation that the Recalled
9 Products would work as represented by Defendant in advertising, on Defendant's websites, and
10 on the Recalled Products' labels and packaging. It is inequitable for Defendant to retain the
11 benefit of payments under these circumstances.

12 137. Plaintiff and Class Members are entitled to recover from Defendant all amounts
13 wrongfully collected and improperly retained by Defendant.

14 138. When required, Plaintiff and Class Members are in privity with Defendant
15 because Defendant's sale of the Recalled Products was either direct or through authorized
16 sellers. Purchase through authorized sellers is sufficient to create such privity because such
17 authorized sellers are Defendant's agents for the purpose of the sale of the Recalled Products.

18 139. As a direct and proximate result of Defendant's wrongful conduct and unjust
19 enrichment, Plaintiff and putative Class Members are entitled to restitution of, disgorgement of,
20 and/or imposition of a constructive trust upon all profits, benefits, and other compensation
21 obtained by Defendant for their inequitable and unlawful conduct.

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25 **COUNT V**
26 **Breach of Express Warranty**

27 140. Plaintiff incorporates the foregoing allegation as if fully set forth herein.

1 141. Plaintiff Plaintiffs bring this claim on behalf of themselves individually and on
2 behalf of the Class.

3 142. Defendant marketed and sold the Recalled Products into the stream of commerce
4 with the intent that the Recalled Products would be purchased or used by Plaintiffs and Class
5 Members.

6 143. Defendant expressly warranted, advertise, and represented to Plaintiffs and Class
7 Members that the Recalled Products were safe and appropriate for use.

8 144. Defendant expressly warranted, advertised, and represented to Plaintiffs and
9 Class Members that the Recalled Products were safe and appropriate for use.

10 145. Defendant made these express warranties regarding the Recalled Products'
11 quality and fitness for use in writing through its website, advertisements, and marketing
12 materials, and on the Recalled Products' packaging and labels. These express warranties became
13 part of that bargain that Plaintiffs and Class Members entered into upon purchasing the Recalled
14 Products.
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16 146. Defendant's advertisements, warranties, representations, and omissions
17 regarding the health risks associated with Recalled Product, were made in connection with the
18 sale of Recalled Products to Plaintiffs and Class Members.

19 147. Plaintiffs and Class Members justifiably relied on Defendant's advertisements,
20 warranties, representations, and omissions regarding the Recalled Products in deciding whether
21 to purchase and/or use Defendant's Recalled Products.
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23 148. Defendant's Recalled Products do not conform to Defendant's advertisements,
24 warranties, representations and omissions in that they are not safe and appropriate for human
25 and infant use, and pose risks of serious injury, including strangulation.
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1 149. Defendant therefore breached its express warranties by placing Recalled
2 Products into the stream of commerce and selling them to consumers, when their use posed
3 health and safety risks, had dangerous effects and were unsafe, rendering these products unfit
4 for their intended use and purpose, and unsafe and unsuitable for infant use as marketed by
5 Defendant. These associated health and safety effect substantially impair the use, value, safety
6 or the Recalled Products, and render them worthless.

7 150. Defendant was aware, or should have been aware, of the danger to health and
8 safety of the use and non-use of the Recalled Products, but nowhere on the packaging label or
9 package inserts or on Defendant's websites or other marketing material did Defendant warn
10 Plaintiff and Class Members that their infants were at risk of strangulation as a result of the
11 dangerous straps used in the Recalled Products.

12 151. Instead, Defendant concealed the dangerous health and safety effects of the straps
13 used in the Recalled Products and deceptively represented that these products were safe and
14 appropriate for infant use since at least August 2018.

15 152. Defendant thus utterly failed to ensure that the material representations they were
16 making to consumers were true.

17 153. The adverse health and safety effects associated with the use and non-use of the
18 Recalled Products existed when they left Defendant's possession or control and were sold to
19 Plaintiffs and members of the Class.

20 154. The dangers associated with use and non-use of the Recalled Products was
21 undiscoverable by Plaintiffs and members of the Class at the time of purchase of the Recalled
22 Products.

23 155. As manufacturers, marketers, advertisers, distributors and sellers of the Recalled
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1 Products, Defendant had exclusive knowledge and notice of the fact that the Recalled Products
2 did not conform to the affirmations of fact and promises.

3 156. In addition, or in the alternative, to the formation of an express contract, 4moms
4 made each of the above-described representations and omissions to induce Plaintiffs and
5 members of the Class to rely on such representations and omissions.

6 157. Defendant's affirmations of fact and promises and its omissions were material,
7 and Plaintiffs and members of the Class reasonably relied upon such representations and
8 omissions in purchasing and/or using the Recalled Products.

9 158. Plaintiffs and Class Members have performed all conditions precedent to
10 Defendant's liability for its breach of express warranty.

11 159. As a direct and proximate result of 4moms' breaches of express warranty,
12 Plaintiffs and members of the Class have been damaged because they did not receive the
13 products as specifically warranted by Defendant. Plaintiffs and members of the Class did not
14 receive the benefit of the bargain and suffered damages at the point of sale stemming from their
15 payment for the Recalled Products.

16 160. Plaintiffs and the Class seek actual damages, attorneys' fees, costs and any other
17 just and proper relief available thereunder for Defendant's failure to deliver goods conforming
18 to their express warranties and resulting breach.

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21 **COUNT VI**
22 **Breach of Implied Warranty**

23 161. Plaintiff incorporates the foregoing allegation as if fully set forth herein.

24 162. Defendant is a merchant engaged in the sale of goods to Plaintiff and Class
25 Members.

26 163. At all times mentioned herein, Defendant manufactured or supplied the Recalled
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1 Products, and prior to the time the Recalled Products were purchased or used by Plaintiff and Class
2 Members, Defendant impliedly warranted to them that the Recalled Products were of
3 merchantable quality, fit for their ordinary use and conformed to the promises and affirmation of
4 fact and omissions made on the Recalled Products' labels and packaging, including that the
5 Recalled Products were safe and appropriate for infant use.

6 164. Plaintiff and Class Members relied on Defendant's promises and affirmations of
7 fact and omission when they purchased and used the Recalled Products.
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9 165. Contrary to these representations and warranties, the Recalled Products were not
10 fit for their ordinary use and did not conform to Defendant's affirmations of fact and promises
11 and omissions because use of the Recalled Products is accompanied by the risk of strangulation,
12 which does not conform to the labels and packaging of these devices.

13 166. Defendant breached its implied warranties by selling Recalled Products that
14 failed to conform to the promises or affirmations of fact made on the packing or label, as use of
15 each Recalled Products was accompanied by the risks of strangulation that do not conform to
16 the packaging or label.
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18 167. Privity exists because Defendant impliedly warranted to Plaintiff and Class
19 Members through warranting, packaging, advertising, marketing, and labeling that the Recalled
20 Products were safe for infant use and made no mention of the risks for strangulation associated
21 with use of the Recalled Products.
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23 168. As a direct and proximate result of Defendant's conduct, Plaintiff and the Class
24 have suffered actual damages in that each Recalled Product they purchased is worth less than the
25 price they paid and which they would not have purchased or used at all had they known of the
26 attendant risks to infants associated with the use of each Recalled Device.
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169. Plaintiff and the Class Members seek actual damages, attorneys' fees, costs and any other just and proper relief available thereunder for Defendant's failure to deliver goods conforming to their implied warranties and resulting breach.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated members of the Classes, prays for relief and judgment, including entry of an order:

- A. Declaring that this action is properly maintained as a class action, certifying the proposed Class(es), appointing Plaintiff as Class Representative and appointing Plaintiff's counsel as Class Counsel;
- B. Directing that Defendant bear the costs of any notice sent to the Class(es);
- C. Declaring that Defendant must disgorge, for the benefit of the Class(es), all or part of the ill-gotten profits they received from the sale of the Recalled Products, or order Defendant to make full restitution to Plaintiff and the members of the Class(es) except that no monetary relief is presently sought for violations of the Consumers Legal Remedies Act;
- D. Awarding restitution and other appropriate equitable relief;
- E. Granting an injunction against Defendant to enjoin it from conducting its business through the unlawful, unfair and fraudulent acts or practices set forth herein;
- F. Granting an Order requiring Defendant to fully and appropriately recall the Recall Products, to remove the claims on its website and elsewhere that the Recalled Products are safe to use, and to fully and properly disclose the safety risks associated with the Recalled Products to anyone who may still be at risk of buying and using the Recalled Products;
- G. Ordering a jury trial and damages according to proof;
- H. Awarding Plaintiff and members of the Class(es) statutory damages, as provided by the applicable state consumer protection statutes invoked above, except that no monetary relief is presently sought for violations of the Consumers Legal Remedies Act;
- I. Enjoining Defendant from continuing to engage in the unlawful and unfair business acts and practices as alleged herein;
- J. Awarding attorneys' fees and litigation costs to Plaintiff and members of the Class(es);

K. Awarding civil penalties, prejudgment interest and punitive damages as permitted by law; and

L. Ordering such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury of all claims in this Complaint so triable.

Dated: October 20, 2022

Respectfully submitted,

/s/ Bryan L. Bleichner
Bryan L. Bleichner (SBN 220340)
CHESTNUT CAMBRONNE PA
100 Washington Avenue South
Suite 1700
Minneapolis, MN 55401
Telephone: (612) 339-7300
bbleichner@chestnutcambronne.com

Gary M. Klinger (*pro hac vice* forthcoming)
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC**
227 W. Monroe Street, Suite 2100
Chicago, IL 60606
Telephone: (202) 429-2290
gklinger@milberg.com

Terence R. Coates (*pro hac vice* forthcoming)
**MARKOVITS, STOCK & DEMARCO,
LLC**
119 E. Court St., Ste. 530
Cincinnati, Ohio 45202
Telephone: (855) 843-5442
tcoates@msdlegal.com

Attorneys for Plaintiff and Putative Class Members

CLRA Venue Declaration
Pursuant to California Civil Code Section 1780(d)

I, _____, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and a member of the bar of this Court. I am an attorney at _____ counsel of record for Plaintiff in this action. I have personal knowledge of the facts set forth in this declaration and, if call as a witness, I could and would competently testify thereto under oath.

2. The Complaint filed in this action is filed in the proper place for trial under Civil Code Section 1780(d) in that a substantial portion of the events alleged in the Complaint occurred in the Northern District of California.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed at _____, California this ____ day of September, 2022.

/s/